The Law of the Sea: What Lies Ahead?

Proceedings of the 20th Annual Conference of the Law of the Sea Institute

co-sponsored by the

University of Miami School of Law

July 21–24, 1986 Miami, Florida

Edited by Thomas A. Clingan, Jr.

Published by
The Law of the Sea Institute
William S. Richardson School of Law
University of Hawaii • Honolulu

The Law of the Sea Institute is housed and sponsored by the William S. Richardson School of Law, University of Hawaii, and is a project (PP/R2) sponsored by the University of Hawaii Sea Grant College Program under Institutional Grant No. NA85AA-D-SG082 from NOAA, Office of Sea Grant, Department of Commerce. The United States government is authorized to produce and distribute reprints for governmental purposes notwithstanding any copyright notations that may appear herein. This is Sea Grant publication UNIHI-SEAGRANT-CR-88-04.

Copyright © 1988 by the Law of the Sea Institute, University of Hawaii. All rights reserved. Manufactured in the United States of America.

International Standard Book Number: 0-911189-18-1

Library of Congress Cataloging-in-Publication Data

Law of the Sea Institute. Conference (20th: 1986: Miami, Fla.)
The law of the sea: what lies ahead?

Bibliography: p. Includes index.

31.00

1. Maritime law--Congresses. 2. United Nations Convention on the Law of the Sea (1982)--Congresses. I. Clingan, Thomas A. II. University of Miami. School of Law. III. Title.

JX4408.L373 1986 341.4'5 88-9469
ISBN 0-911189-18-1

This book may be ordered from:
The Law of the Sea Institute
William S. Richardson School of Law
University of Hawaii at Manoa
2515 Dole Street, Room 208 Honolulu, Hawaii 96822
Phone (808) 948-6750 or 941-8500
Telex 7431895 (ITT) SEALAW

THE LAW OF THE SEA INSTITUTE

Director: John P. Craven
Associate Director: Scott Allen
Assistant Director: Maivan Clech Lam
Administrator/Editor: Carol Stimson
Publications Manager: Elizabeth Ng
Membership Secretary: Philomene Verlaan

1986 EXECUTIVE BOARD

Lee G. Anderson College of Marine Studies University of Delaware

Gordon L. Becker Kirlin, Campbell & Keating New York

Thomas A. Clingan School of Law University of Miami

Brian Flemming Stewart MacKeen & Covert Halifax

John A. Knauss Graduate School of Oceanography University of Rhode Island

Tadao Kuribayashi Keio University Tokyo

Edward L. Miles Institute for Marine Studies University of Washington

Max K. Morris Arthur Vining Davis Foundation Jacksonville, Florida

Gordon R. Munro Department of Economics University of British Columbia Myron H. Nordquist Kelley Drye and Warren Washington, D.C.

Francisco Orrego Vicuna Institute of International Studies Santiago

Bernard Oxman School of Law University of Miami

Willy Ostreng Fridtjof Nansen Institute Oslo

Renate Platzoder Institute of International Affairs Munich-Ebenhausen

Jan Schneider Attorney Washington, D.C.

Tullio Treves Permanent Mission of Italy to the United Nations

Jon Van Dyke Richardson School of Law University of Hawaii

Conrad G. Welling Ocean Minerals Company Mountain View, California

TABLE OF CONTENTS

OPENING CEREMONIES Thomas A. Clingan Edward T. Foote Mary Doyle John P. Craven	. 3
PART I: INTERDICTION AT SEA	
Introduction	. 9
In the Wake of the <i>Dauntless</i> the Background and Development of Maritime Interdiction Operations Andrew W. Anderson	. 11
High Seas and Navigational Rights: What are They and Who May Assert Them in US Courts? Stefan A. Riesenfeld	. 41
International Law of the Sea and Human Rights Issues Louis B. Sohn	. 51
Interdiction at Sea and the Fourth Amendment	. 72
Discussion	.110
LUNCHEON SPEECH	
Introduction	.125
Who Will Protect the Freedom of the Seas?	.126
Discussion	.131
PART II: SELF DEFENSE AND THE NEW LAW OF THE SEA REGIMES	
Introduction	.135
Belligerent and Neutral Rights in Straits and Archipelagoes Captain Richard Jack Grunawalt, USN	.137

	Contemporary Developments Affecting Navigation Rights in the Law of the Sea William T. Burke							141
	The Nuclear Free Zone in the South Pacific Colin Keating							150
	Commentary							157
	Chinese Perceptions of the Law of the Sea . William T. Burke							160
	China's Navigation Policy in its Territorial Sea Zhiguo Gao							161
	Commentary							164
	Discussion							166
MA	RT III: NAGEMENT OF TRANSBOUNDARY RESOURC OBLEMS AND SOLUTIONS	ES	:					
	Introduction							175
	Tuna in the Eastern Tropical Pacific Alberto Szekely					c		177
	Tuna Management in the South Pacific Judith Swan							184
	Commentary							204
	Recent Developments in the Cooperative Developm Offshore Petroleum Resources Ian Townsend Gault	nen	nt	of			٠	207
	Discussion		:	•	٠			228
LU	NCHEON SPEECH							
	Introduction				20			235
	Frontiers of Oceanography							236
	Discussion							239

PART IV: COASTAL STATE PRACTICE IN THE EXCLUSIVE ECONOMIC ZO IS IT CONSISTENT WITH THE LOS CONVENTION? SELECTED	NE:
EXAMPLES OF CONFORMITY AND NON-CONFORMITY	
Introduction	243
Conservation and Optimum Utilization of Living Resources Barbara Kwiatkowska	245
The Control of Marine Pollution from Ships:	276
Recent Experience of the United States in Conducting Marine Scientific Research in Coastal State Exclusive Economic Zones John A. Knauss and Mary Hope Katsouros	297
Coastal State Practice in the Exclusive Economic Zone: The Right of Foreign States to Use This Zone Tullio Scovazzi	310
Discussion	329
PART V: AUTHORITY TO MANAGE FISHERIES AND MINERAL RESOURCE OF THE SOUTHERN OCEAN	CES
Introduction	341
Authority to Manage Fisheries and Mineral Resources of the Southern Ocean: Objectives of Management M. C. W. Pinto	343
Authority to Manage Fisheries and Mineral Resources of the Southern Ocean Ambassador Fernando Zegers Santa Cruz	366
Authority to Manage Fisheries and Mineral Resources of the Southern Ocean: The Perspective of Non-Claimant Parties to the Antarctic Treaty Scott A. Hajost	369
Perspective of Non-Parties to the Antarctic Treaty Abdul G. Koroma	380
The Antarctic Mineral Resource Negotiations:	. 386

Budislav Vukas					:	404 408
Discussion						412
PART VI: VIOLENCE AT SEA						
Introduction						417
Violence at Sea: Scope of the Problem RADM J. W. Kime, USCG, and Daniel F. Shee	eha	n				419
The Two Faces of Piracy Burdick H. Brittin						424
Commentary Captain William L. Schachte, Jr		:	:	:		432 445
Discussion						450
LUNCHEON SPEECH						
Introduction						463
The Maritime Boundaries of the United States: Where Are We Now? David A. Colson				٠		464
Discussion						472
PART VII: DISPUTE SETTLEMENT WITH AND AMONG NON-PA TO THE LOS CONVENTION	AR	TI	ES	5		
Introduction						477
Dispute Settlement with and Among Non-Parties to t Law of the Sea Convention: Navigation and Pollution Bernard H. Oxman	he					479
Dispute Settlement Among Non-Parties to the LOS C with Respect to the Outer Limits of the Continental	on She	vei	nti	on		
Choon-ho Park						494 495
Conflict Between Mining Sites of Non-Parties Conrad Welling						501

Non-Signatories of the Law of the Sea Convention Günther Jaenicke					•	300
Discussion and Questions						516
GENERAL COMMENTS						
Introduction						529
Maritime Legislation of Coastal States and the 1982 UN Convention on the Law of the Sea V. F. Tsarev		٠		٠		530
The 1982 UN Convention on the Law of the Sea and the International Maritime Organization V. I. Andrianov		•				539
BANQUET SPEECH						
Uncertainties in the Implementation Process: The Case for Navigational Freedoms Lewis M. Alexander	•					545
LIST OF BARTICIDANTS						552
LIST OF PARTICIPANTS		•				333
INDEX						563